IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15064 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASHBHAI MAGANBHAI PATEL ADDL ASSTT ENGINEER(MECHANICAL - Petitioner(s)
Versus
DISTRICT PANCHAYAT & 2 - Respondent(s)

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Appearance :
MR NK MAJMUDAR for Petitioner
MR HS MUNSHAW for Respondent(s)
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/03/2006

ORAL JUDGMENT

1. In the present petition, the petitioner who is a

retired employee of the District Panchayat, Vadodara has challenged the charge-sheet dated 5.9.2003 issued against him. The petitioner retired as Mechanical Supervisor with effect from 29th February 2000. During his service, though one charge-sheet was issued against him, by the order dated 16.1.2003 it was held that the charges are not proved and the inquiry was therefore dropped. On 5.9.2003, a charge-sheet came to be issued against the petitioner involving as many as five charges. The gist of the charges can be noted as follows:-

(1) Charge No.1. The petitioner had remained absent unauthorizedly without sanction of leave for the period between 18.11.88 to 17.3.89.

(2) Charge No.2: Though by communication dated 2.1.89, the petitioner was asked to report for duty immediately, he refused to accept the post and did not resume duty.

(3) Charge No.3. He had produced a report suggesting that between 18.12.88 to 17.3.89, he was suffering from liver pain which according to the Department was with a view to misleading the office.

(4) Charge No.4. This charge is consequential to charge No.3 and it stated that for the period

between 18.12.88 to 17.3.89, he had created false documents to justify the absence without leave.

(5) Charge No.5 pertains to his absence between 18.11.88 to 17.3.89 during which period, according to the chargesheet, the petitioner had gone abroad and thereby committed misconduct.

2. Few facts, which are not in dispute, can be noted at this stage.

3. That the petitioner retired from service with effect from 29.2.2000. During his service, no chargesheet containing any of the abovementioned charges was issued against him. The said chargesheet was issued against the petitioner more than three years after his retirement on 5.9.2003.

4. From the above materials, it can be seen that the chargesheet was issued against the petitioner after his retirement for the alleged events which had taken place in the year 1988-89.

5. Rule 189-A of the Bombay Civil Service Rules reads as follows:

> 189-A. The Governor reserves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his

service, including services rendered upon re-employment after retirement:

Provided that --

(a) such departmental proceeding, if instituted while the Government servant was in service whether before his retirement or during his re-employment shall after the final retirement of the Government servant be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the Government servant had continued in service;

(b) such departmental proceeding if not instituted while the Government servant was in service, whether before his retirement or during his re-employment--

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relations to the Government servant during his service.

(d)the Gujarat Public Service Commission shall be consulted before final orders are passed.

Explanation. For the purpose of this rule --

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date, and

(b) a judicial proceeding shall be deemed to be instituted:

(i)in the case of a criminal proceeding on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made, and
(ii)in the case of Civil proceeding, on the date of presentation of the plaint in the court.”

It can, therefore, be seen straightway that since the petitioner had retired from service, the Department could not have instituted the proceedings without sanction of the Governor and could not have inquired into any event which took place more than four years before such institution. From the chargesheet which is produced on record, it does not appear that the same has been issued with the permission of the Governor. More importantly, admittedly all the incidents with respect to which the Department wants to inquire into the charges levelled against the petitioner pertained to the year 1988 and 1989 for which the chargesheet came to be issued on 5.9.2003. Therefore, the requirement that such charges could not be with respect to any event which took place beyond 4 years from the date of the institution is not fulfilled in the present case.

6.In view of the above factual and legal position, it is not possible for the respondents to sustain the chargesheet. The same is therefore required to be and

is hereby quashed.

7. It is stated that on account of pendency of the said proceedings, full post retiral benefits of the petitioner have not been released. Now that the chargesheet is quashed, it is expected that the respondents shall release the same forthwith. The delayed payment shall carry simple interest at the rate of 8 per cent from the due date till its actual payment. Such exercise shall be carried out within two months from the date of receipt of this order.

8. I find that there was total non-application of mind on the part of the administration in issuing chargesheet on the petitioner after so many years of his retirement for some alleged absence from duty and for production of some documents to cover such absence which took place in the year 19888 and 1989. When the administration did not find it appropriate to inquire into the same for more than a decade while the petitioner was in service, there was no reason why such issues should have been raked up more than 3 years after the retirement of the petitioner. Issuance of the chargesheet more than three years after the date of retirement has resulted into denying the retiree of his full retiral benefits. The petition is therefore,

allowed with cost of Rs.10,000/- (Rupees ten thousand only). Rule is made absolute accordingly.

(Akil Kureshi, J.)

(vjn)